

Chowriappa Constructions, Bangalore and ors. Vs. Embassy Constructions and Developments Private Limited, Bangalore

Chowriappa Constructions, Bangalore and ors. Vs. Embassy Constructions and Developments Private Limited, Bangalore

SooperKanoon Citation : sooperkanoon.com/381585

Court : Karnataka

Decided On : Jul-11-2002

Reported in : 2002CriLJ3863; 2002(4)KarLJ532

Judge : K. Sreedhar Rao, J.

Acts : [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 436

Appeal No. : Criminal Revision Petition No. 1335 of 2001

Appellant : Chowriappa Constructions, Bangalore and ors.

Respondent : Embassy Constructions and Developments Private Limited, Bangalore

Advocate for Def. : Vivek Chandy, Adv.

Advocate for Pet/Ap. : P.H. Ramalingam, Adv.

Disposition : Petition dismissed

Judgement :

ORDER

K. Sreedhar Rao, J.

1. The revision filed against the order of the XIV A.C.M.M., Bangalore in C.C. No. 26636 of 2001. The proceedings relate to a complaint filed under Section 138 of the Negotiable Instruments Act. The petitioners are the accused 1 to 3. Pursuant to the summons, they appeared before the Court. The Counsel Sri P.H. Ramalingam filed power for the accused and moved the bail application under Section 436 of the Cr. P.C. The Trial Court admitted the accused 1 to 3 to bail on the condition of executing a bond for Rs. 10,000/- each with a like surety. However, a concession was given to the accused to offer surety on the next date of hearing. Being aggrieved by the insistence of the surety by the Court in the impugned order, the present revision is filed.

2. The Counsel for the petitioners relied on the ruling of this Court in K. Pandarinathan v. V. Raju and Anr., : ILR 1997 KAR2560 and contended that the insistence of a personal bond by the accused and a surety by the Trial Court is illegal and unwarranted. In the decision cited, the following observations are made in para 5:

'A careful reading of Section 88 would disclose that it does not apply to the situation as in hand. The section indicates that if a person is present in a Court in connection with a case or otherwise and the officer presiding the Court is entitled to issue summons or warrant to secure his presence, then he may direct that person to execute a bond for his presence in his Court on a later date or to secure his presence in some other Court notwithstanding the fact that his presence in the Court at the relevant time is not in connection with that case for which he is being bound over. That is to say, if a person required to be arrested or detained in connection with some other case either before him or elsewhere is present in his Court, then the Presiding Officer in whose Court he is present, has power to issue warrant calling upon him to execute bond for his appearance in future. It is not that situation that is present here and Section 88 can, therefore, have no application. In this case the presence of the accused is secured in pursuance to the summons issued by the Court in the very case he is asked to appear. As long as the warrant has not been issued to the accused and when the accused was present along with his Counsel in response to the summons, there was no need for the 2nd respondent to have passed Annexure-D endorsement calling upon the accused to

furnish security for his enlargement. Annexure-D endorsement issued by the 2nd respondent is illegal and liable to be quashed. I, therefore, quash Annexure-D endorsement and dispose of the writ petition. Whatever amount that is deposited by the petitioner in terms of the impugned order will be ordered to be returned to him'.

3. After carefully going through the decision relied on by the Counsel for the petitioners, I respectfully disagree with the view taken by the learned Single Judge. It appears that the case was not properly presented and argued and there is a total failure of duty on the part of the Bar. In the said decision, the provisions of Section 2(w) and 2(x), Section 88 and Sub-section (3) of Section 204 of the Cr. P.C, were alone considered. The provisions of Section 436 of the Cr. P.C. were not adverted to and argued. The provisions of Section 436 of the Cr. P.C. read thus;

'436. In what cases bail to be taken.--(1) When any person other than a person accused of a non-bailable offence is arrested or detained without warrant by an officer-in-charge of a police station, or appears or is brought before a Court, and is prepared at any time while in the custody of such officer or at any stage of the proceedings before such Court to give bail, such person shall be released on bail:

Provided that such officer or Court, if he or it thinks fit, may instead of taking bail from such person, discharge him on his executing a bond without sureties for his appearance as hereinafter provided:

Provided further that nothing in this section shall be deemed to affect the provisions of Sub-section (3) of Section 116 (or Section 446-A).

(2) Notwithstanding anything contained in Sub-section (1), where a person has failed to comply with the conditions of the bail bond as regards the time and place of attendance, the Court may refuse to release him on bail, when on a subsequent occasion in the same case he appears before the Court or is brought in custody and any such refusal shall be without prejudice to the powers of the Court to call upon any person bound by such bond to pay the penalty thereof under Section 446'.

4. The plain reading of the provisions leaves no doubt in the minds to understand the position of law envisaged therein. In all bailable offences when an accused is arrested or detained without warrant by the officer in charge of the police station appears or brought before the Court and is prepared at any time while in custody of the officer or at any stage of the proceedings before the Court to give bail, such person shall be released on bail. Right to seek bail in respect of bailable offences is a matter of right. The value of bond and the nature of surety is the only discretion vested in the Court. The proviso to the provision also makes it clear that the officer in his opinion or the Court in its opinion in their discretion may release the person by taking only a personal bond without insisting upon surety for the appearance. The provision also makes it clear that grant of bail need not necessarily be by the Court only. The Police Officer has also the jurisdiction to release the person on bail with or without surety. Therefore, insistence of the personal bond and the surety being essentially a matter of discretion and within the jurisdiction of the Court under Section 436 of the Cr. P.C.

5. In that view of the matter, I do not find any illegality in the order which calls for interference. The relevant provisions of law having not been argued and brought to the notice, the decision of K. Pandarinathan's case, *supra*, is obviously a *per incuriam*.

6. In that view of the matter, I find no merit in the petition.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com